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6 Attorneys for Defendant
7 LOCKHEED MARTIN CORPORATION

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 EMILIO COLLADO,
12 Plaintiff,

13 v.

14 LOCKHEED MARTIN, and DOES 1
15 THROUGH 20, inclusive,
16 Defendants.

Case No. C07 05190 JF

**STIPULATION TO ALLOW PLAINTIFF
TO FILE FIRST AMENDED COMPLAINT
AND [PROPOSED] ORDER**

17
18 The Parties to the above-captioned matter, by and through there attorneys, Stanley
19 Hilton, Esq., attorney for Plaintiff, EMILIO COLLADO, and Todd K. Boyer, attorney for
20 Defendant, LOCKHEED MARTIN CORPORATION, stipulate and agree as follows:

21 **RECITALS**

22 Whereas, Defendant LOCKHEED MARTIN has filed a Motion to Dismiss and
23 Motion to Strike that is scheduled to be heard on November 30, 2007. In its motion, Defendant
24 moved to dismiss Plaintiff's fifth cause of action for breach of the covenant of good faith and fair
25 dealing, under Federal Rule of Civil Procedure 12(b)(6). Additionally, Defendant moved under
26 Federal Rule of Civil Procedure 12(f), to strike portions of Plaintiff Emilio Collado's Complaint
27 alleging race and national origin discrimination, and moved for an order striking all allegations of
28 emotional distress from Plaintiff's third and fifth causes of action, for breach of contract and breach

1 of an implied covenant, respectively.

2 Whereas, Plaintiff and Defendant have agreed that the relief sought by Defendant's
3 Motion to Dismiss and Motion to Strike is appropriate and thus no hearing is necessary.
4 Accordingly, the parties agree that the matter should be taken off calendar, and also jointly request
5 that the Court permit Plaintiff to file a First Amended Complaint. Plaintiff agrees that the First
6 Amended Complaint shall cure all the defects raised in Defendant's motion, and that none of the
7 allegations or causes of action which Defendant moved to dismiss or strike as enumerated in its
8 moving papers will be contained in the First Amended Complaint.

9 **The Parties hereby further stipulate and agree as follows:**

10 1. The parties stipulate to take Defendant's Motion to Dismiss and Strike
11 currently set for hearing on November 30, 2007 at 10:30 a.m. off calendar pending the filing of
12 Plaintiff's First Amended Complaint.

13 2. The parties stipulate to allow Plaintiff to file a First Amended Complaint.
14 Plaintiff agrees to draft and file the First Amended Complaint within twenty (20) days of the date
15 this Stipulation and Order is executed by all parties and signed by the Court.

16 3. The parties stipulate and agree that Plaintiff's First Amended Complaint shall
17 not contain any of the allegations or causes of action which Defendant moved to strike or dismiss in
18 its Motion to Dismiss and Strike. Specifically, the First Amended Complaint shall not contain or
19 make any reference to allegations of national origin or race discrimination, nor shall it contain a
20 cause of action for breach of the implied covenant of good faith and fair dealing. Additionally, the
21 parties stipulate that the First Amended Complaint shall not contain any claim for emotional distress
22 suffered as a result of any breach of contract.

23 4. The parties further agree that this stipulation allowing Plaintiff to file a First
24 Amended Complaint is conditioned on Plaintiff's agreement to remove the allegations and cause of
25 action which Defendant moved to dismiss and strike by way of its Motion to Dismiss and/or Strike.
26 The parties also stipulate that neither the First Amended Complaint nor any amended complaint
27 thereafter shall contain the allegations and cause of action which Defendant moved to dismiss and
28 strike in its Motion to Dismiss and/or Strike.

STIPULATION TO ALLOW PLAINTIFF TO FILE FIRST AMENDED COMPLAINT

1 5. The parties stipulate that should the First Amended Complaint or any other
2 amended complaint contain any of the allegations or causes of action which Defendant moved to
3 dismiss and/or strike as enumerated above, that the Court should dismiss or strike those allegations
4 or causes of action from the First Amended Complaint without need for further notice or briefing.

5 6. The parties stipulate Defendant shall have twenty (20) days to file a
6 responsive pleading from the date Plaintiff electronically files his First Amended Complaint.

7
8 Dated: November 27, 2007

_____/s/_____
STANLEY HILTON, Esq.
Attorney for Plaintiff
EMILIO COLLADO

9
10
11 Dated: November 27, 2007

_____/s/_____
TODD K. BOYER
LITTLER MENDELSON, P.C.
A Professional Corporation
Attorney for Defendant
LOCKHEED MARTIN CORPORATION

ORDER

GOOD CAUSE APPEARING AND UPON STIPULATION OF THE PARTIES, IT IS ORDERED that Defendant's Motion to Dismiss and Strike will be taken off calendar and Plaintiff will be allowed to file a First Amended Complaint which shall not contain the allegations and/or causes of action which Defendant moved to strike and/or dismiss in its Motion. The Court orders that any amended complaint which contains makes reference to allegations of national origin or racial discrimination, or contains a cause of action for breach of the implied covenant of good faith and fair dealing shall have those allegations stricken from the Complaint without any additional notice to or briefing by the parties. Plaintiff will have twenty (20) days from the date of my signature on this Order to serve and file his First Amended Complaint. Defendant shall have twenty (20) days after the electronic filing of the First Amended Complaint to file a responsive pleading.

Dated: 12/10, 2007



HONORABLE JEREMY FOGEL
United States District Judge